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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/458,896	12/10/1999	MICHAEL C. BERTRAM	533/038	9421

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EXAMINER

MOLINARI, MICHAEL J

ART UNIT	PAPER NUMBER
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2665

DATE MAILED: 09/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

*J*

**Office Action Summary**

Application No.

09/458,896

Applicant(s)

BERTRAM ET AL.

Examiner

Michael J Molinari

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1-4, 6-8, and 10-16 are rejected under 35 U.S.C. 102(a) as being anticipated by Omoto et al. Japanese Publication No. 11-163817.

3. Referring to claims 1 and 10, Omoto et al. disclose an information distribution system comprising a NULL packet inserter (Null Gen, Drawing 1) that inserts NULL packets within a transport stream including content packets (TS(C), Drawing 4). Omoto et al. further disclose a transport processor (MUX, Drawing 5) that replaces some of the NULL packets with asset packets (TS(C), Drawing 6) associated with said content packets (see Detailed Description, paragraph 002). Note that these devices can be used together according to the cascading method disclosed by Omoto et al. in Drawing 10.

4. Referring to claims 2 and 11, Omoto et al. disclose two transport packetizers (compression coding means and redundant code occurrence means) that packetize the two transport streams (see Detailed Description, section 0008, 1 & 2).

5. Referring to claims 3-4, Omoto et al. disclose a storage means (retardation machine) that is that is coupled to the transport processor (MUX) (see Detailed Description, section 0026, first sentence).

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6. Referring to claims 6 and 13, Omoto et al. disclose a bandwidth reservation signal (CTL, see Detailed Description, section 0015, second sentence), which adapts the number of NULL packets that are multiplexed with the transport stream containing content packets.

7. Referring to claims 7 and 14, the mapping data that indicates the location of NULL packets is contained within the NULL packets themselves and is used by the null packet detector as disclosed by Omoto et al. (see Detailed Description, section 0027) to determine the location of NULL packets within the transport stream.

8. Referring to claims 8 and 16, Omoto et al. disclose a means of “setting the data rate of the transport stream” (see Detailed Description, section 0020), which effectively sets a utilization level of the NULL packets.

9. Referring to claim 12, Omoto et al. disclose a method of multiplexing a plurality of transport streams into one transport stream (see Detailed Description, sections 0083-0084 and also see Drawing 10), creating a transport stream that contains a plurality of sub-streams.

10. Referring to claim 15, Omoto et al. disclose just such a set of steps (see Detailed Description, sections 0030 through 0035).

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. Claims 5 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Omoto et al. in view of LaJoi et al.

13. Omoto et al. disclose an apparatus as disclosed in claims 1 and 4. Omoto et al. differ from the claims 5 and 17 in that they fail to disclose a session controller for interacting with a subscriber to receive a content request and that causes both transport streams to be provided to the transport processor. However, using session controllers to receive requests from subscribers and to initiate the transmission of transport streams to be delivered to said subscribers is well known in the art. For example, LaJoi et al. disclose such a session controller (interactive cable gateway, Figure 1), which has the advantage of interacting with subscribers to enable them to select and receive the content they wish to receive. One skilled in the art would have recognized the advantage of enabling subscribers to select and receive the content they wish to receive as taught by LaJoi et al. and would have known to apply it to the apparatus disclosed by Omoto et al. Therefore, it would have been obvious to a person with ordinary skill in the art at the time of the invention to incorporate the session controller as taught by LaJoi et al. into the invention of Omoto et al. to achieve the advantage of enabling subscribers to select and receive the content they wish to receive.

14. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Omoto et al. Omoto et al. disclose a transport processor (MUX) that is responsive to an asset count signal (CTL) to replace NULL packets with asset packets. Omoto et al. differ from claim 9 in that they disclose replacing a plurality of NULL packets with the same number asset packets, whereas claim 9 discloses replacing a plurality of NULL packets with each asset packet. However, it is generally considered to be within the ordinary skill in the art to adjust, vary, select or optimize

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the numerical parameters or values of any system absent a showing of criticality in a particular recited value. The burden of showing criticality is on Appellant. In re Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937); Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 471 (1943); In re Schneider, 148 F.2d 108, 65 USPQ 129 (CCPA 1945); In re Aller, 220 F.2d 454, 105 USPQ 233 (CCPA 1955); In re Saether, 492 F.2d 849, 181 USPQ 36 (CCPA 1974); In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977); In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Therefore it would have been obvious to a person with ordinary skill in the art at the time of the invention to vary the size of the NULL packets with respect to the asset packets.

#### *Response to Arguments*

15. Applicant's arguments filed 22 August 2002 have been fully considered but they are not persuasive. The applicant amended claims 1 and 10 to include the limitation that the asset packets be associated with the content packets. Omoto et al. also disclose that their content streams are associated. In paragraph 0002 of the Detailed Description Omoto et al. disclose that their multiplexing scheme is for use in multiplexing two or more sets of program data, such as sound data and picture data. Sound data and picture data being multiplexed together in MPEG2 are clearly associated. Therefore, the applicant's arguments are not considered to be persuasive by the examiner.

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

17. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J Molinari whose telephone number is (703) 305-5742. The examiner can normally be reached on Monday-Friday 8am-4:30pm.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (703) 308-6602. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9315 for After Final communications.

20. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

MJM

Michael Joseph Molinari  
September 6, 2002

  
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